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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/601,739 | 06/23/2003 | Merle T. Brumfield | 7807 | 9015 |

7590 08/30/2004

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EXAMINER

BUTLER, DOUGLAS C

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

3683

DATE MAILED: 08/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/601,739

Applicant(s)

BRUMFIELD ET AL.

Examiner

Douglas C. Butler

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 July 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 19-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 19-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The amendment filed July 6, 2004 has been entered.
2. Claims 19-24 are pending with claims 1-18 having been canceled.
3. The terminal disclaimer has been accepted by the Group paralegal thus overcoming the double patenting rejection.
4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).
5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:


A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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6. Claims 19-~~23~~²⁴ are rejected under 35 U.S.C. 102(b) as being anticipated by Herffurth (6,173,821), of record.

Fig. 1 of Herffurth discloses a caliper brake cover 40 in combination with a caliper or saddle 32, a set of brake pads 34, a rotor disc 20 and a motor vehicle "decorative" wheel at 11 with circumferentially spaced openings 16. The caliper cover 40 has vertical

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 ^{extending} and laterally ^{or} walls. The cover 40 is fastened ~~to~~ bolted to the caliper or saddle 32 as per column 3, lines 32-43 of Herffurth. Re the features directed to cooling of the brake by air circulation, note the column 3, lines 40-43 indicates that the cover or protector 40 serves for additional cooling. See also column 2, lines 26-31 and lines 52-64 as to the circulation of air that cools the brake. In addition, note column 1, lines 32-36 of Herffurth indicating that the caliper cover 40 excludes dirt or dust which thus encompasses the "dust cover" feature.

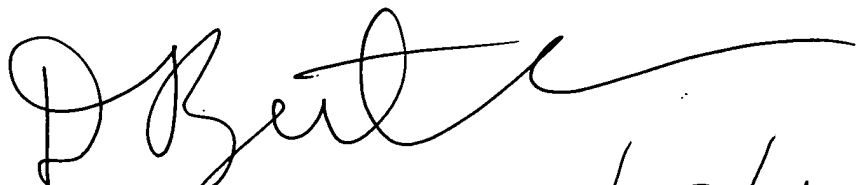
7. Applicant's arguments filed July 6, 2004 have been fully considered but they are not persuasive. Applicants argue that the protector 40 of Herffurth is primarily designed to avoid gravel or other loose material from entering space 51. The examiner doesn't disagree with applicants' remark. However, Herffurth nonetheless anticipates the claims by serving as a dust cover by excluding dirt while still permitting air to continue circulating to remove heat from the brake. As to applicants' arguments that Herffurth does not address the decorative aspect of the invention concerning the appearance of the wheel and brake housing, see MPEP 2144.04 under the heading "Aesthetic Design Changes". Herffurth inherently improves the appearance of the wheel and brake housing but, in any event, matters such as being argued and claimed directed to ornamentation and aesthetic aspects which have no mechanical function cannot be relied upon to patentably distinguish the claimed invention over the prior art.

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication should be directed to Exmr. Butler at telephone number 703-308-2575.


DOUGLAS C. BUTLER
PRIMARY EXAMINER
AV 3683

8/28/04

Butler/vs
August 26, 2004